

1 Scott A. Burroughs, Esq. (SBN 235718)

2 scott@donigerlawfirm.com

3 Frank R. Trechsel, Esq. (SBN 312199)

4 ftrechsel@donigerlawfirm.com

5 DONIGER / BURROUGHS

6 603 Rose Avenue

7 Venice, California 90291

8 Telephone: (310) 590-1820

9 Attorneys for Plaintiff

10 Valerie Yanaros, Esq.

11 Texas Bar No. 24075628

12 Applying to Appear Pro Hac Vice in the Northern District Court of California

13 Yanaros Law, P.C.

14 8300 Douglas Avenue Suite 800

15 Dallas, Texas 75225

16 Telephone: (512) 826-7553 valerie@yanaroslaw.com

17 Attorney for Defendant Goode Enterprise Solutions, Inc.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 Dustin Neff, an individual,

21 Plaintiff,

22 v.

23 SBA Entertainment, LLC; et al.,

24 Defendants.

Case No.: 23-cv-02518-JD
H. Judge James Donato Presiding

**JOINT CASE MANAGEMENT
STATEMENT**

Initial Case Management Conference

Date: August 24, 2023

Time: 10:00 A.M.

Location: Courtroom 11, 19th floor
Phillip Burton Federal Bldg.
450 Golden Gate Avenue
San Francisco, CA 94102

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9.

1. SUBJECT MATTER JURISDICTION

This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et seq.* Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and (b). All known defendants in this matter have been served.

2. STATEMENT OF THE PRINCIPAL FACTUAL ISSUES IN DISPUTE

Plaintiff's Statement:

This is a clear case of copyright infringement. Plaintiff, Dustin Neff, is an independent filmmaker, author, and researcher whose work has been featured on such major outlets as the History Channel, the Travel Channel, and the Discovery Channel.

Neff created and owns a valid copyright registration for the original photograph of himself in front of Pluto's Cave at Mount Shasta, California at issue in this case. The Subject Photograph was also routinely displayed with copyright management information ("CMI") identifying Neff as the author and owner of the Subject Photograph. Prior to the acts complained of in this action, Neff widely displayed the Subject Photograph, including in articles to promote his forthcoming film in which the Subject Photograph was to be used.

Defendants SBA Entertainment, LLC and Goode Enterprise Solutions, Inc., copied the Subject Photograph without Neff's authorization or consent including by reproducing and distributing same in the film *The Cosmic Secret* ("Accused Film,") which on information and belief was produced, promoted, and distributed by Defendants and which was directed, written by, and stars James Corey Goode, the owner of Goode Enterprises, LLC. The Accused Film was publicly distributed and sold on major streaming platforms including Amazon Prime Video, Crackle, Tubi,

1 and excerpts of the Accused Film featuring the Subject Photograph were further used
2 to promote the film on social media. Neff's CMI was not included with any display
3 of the Accused Film and Neff was not credited in any way in same.

4 This unauthorized exploitation violated Neff's exclusive rights in his artwork
5 under 17 U.S.C. § 106, including the exclusive rights to reproduce, distribute, and
6 create derivative works from his original material. And the removal and/or alteration
7 of Neff's CMI and the display of the Subject Photograph with false CMI are
8 violations under 17 U.S.C. § 1202.

9 Defendant's Statement:

10 The claims of copyright infringement in this case are nebulous and unfounded.
11 Plaintiff has not identified a valid copyright or any clear infringement by Defendant
12 Goode Enterprise Solutions, Inc. ("Goode"). Even if there is a valid copyright on the
13 Subject Photograph at issue, any use of the subject work by Goode is de minimis or
14 fair use. Further, the claims are clearly barred by the statute of limitations applicable
15 in this case. Finally, statutory remedies are unavailable in this matter due to Neff's
16 registration of any alleged copyright after the alleged infringement and Neff cannot
17 show any actual damages.

18 **3. LEGAL ISSUES**

19 Plaintiff's Statement:

20 The primary legal issues in this case are Neff's ownership of the Subject
21 Photograph and Defendants' infringement thereof, including Defendants' access to
22 the Subject Photograph, the substantial similarity between the Subject Photograph
23 and the infringing use found in the Accused Film, and Neff's damages suffered as a
24 result of Defendants' infringement.

25 Defendant's Statement:

26 In addition to the above, legal issues include the validity of Neff's alleged
27 copyright.

1 **4. MOTIONS**

2 Plaintiff's Statement:

3 Neff may wish to move to add additional defendants should discovery reveal
4 the involvement of currently unknown parties in the chain of infringement of the
5 Subject Photograph. It is likely an initial round of discovery will need to be obtained
6 in order to discern the identities of these defendants.

7 Neff further anticipates filing a Motion for Partial Summary Judgment for
8 liability as to Defendants' liability for copyright infringement by the deadline for
9 dispositive motions.

10 Defendant's Statement:

11 Should the litigation extend past a settlement of the parties and into protracted
12 litigation, Goode plans to file a motion to dismiss for lack of jurisdiction and failure
13 to state a claim as well as to add necessary parties.

14 **5. AMENDMENT OF PLEADINGS/ADDITION OF PARTIES**

15 Neff included in this lawsuit unnamed "Doe" defendants. Should Defendants
16 reveal in their Initial Disclosures or discovery responses any third parties involved in
17 the chain of alleged infringement of the Subject Photograph, Neff will move to add
18 such entities as parties to this action in place of Doe Defendants.

19 Should the litigation extend past a settlement of the parties and into protracted
20 litigation, Goode will move to add necessary parties that are already evident as
21 necessary to this action from the alleged infringing work.

22 **6. EVIDENCE PRESERVATION**

23 The parties have reviewed the Guidelines Relating to the Discovery of
24 Electronically Stored Information. The parties confirm that they have undertaken
25 steps to preserve evidence relevant to the issues reasonably evident in this action.
26 However, the parties have not yet met and conferred regarding reasonableness and
27 proportionality in discovery.
28

1 **7. DISCLOSURES**

2 Neff has fully and timely complied with the initial disclosure requirements of
3 Fed. R. Civ. P. 26 and produced its Initial Disclosures to Defendant pursuant to local
4 and federal rules of civil procedure.

5 Defendant will produce its Initial Disclosures as required under local and
6 federal rules.

7 **8. DISCOVERY**

8 The parties anticipate using all discovery procedures allowed under the Federal
9 Rules, including depositions, requests for documents, interrogatories and requests for
10 admissions, to be completed in accordance with the scheduling order. The parties
11 further anticipate entering into an appropriate stipulated protective order governing
12 the disclosure and use of any sensitive information or documents exchanged during
13 discovery. To date, there has been no discovery propounded.

14 Neff further anticipates seeking all pertinent information regarding
15 Defendants' revenues attributable to the Accused Film and web-traffic to pages on
16 which Defendants promoted the Accused Film using, in whole or in part, the Subject
17 Photograph.

18 Defendant anticipates that no discovery is necessary and can be decided at the
19 pleading stage. However, should discovery move forward using all discovery
20 procedures allowed under the Federal Rules, including depositions, requests for
21 documents, interrogatories and requests for admissions, to be completed in
22 accordance with the scheduling order and a stipulated protective order.

23 **9. CLASS ACTION**

24 Not applicable as this case is not a class action and the Parties do not anticipate
25 the addition of class allegations.

26 **10. RELATED CASES**

27 None.

1 **11. RELIEF**

2 As set forth in Neff's Complaint, Neff seeks:

3 1. That Defendants—each of them—and their respective agents,
4 employees and servants be enjoined from reproducing, displaying,
5 distributing, disseminating, or otherwise exploiting the Subject
6 Photograph or otherwise violating Plaintiff's exclusive rights in the
7 Subject Photograph;

8 2. That Plaintiff be awarded all profits of Defendants, and each of them,
9 plus all losses of Plaintiff, the exact sum to be proven at the time of
10 trial, or, if elected before final judgment, statutory damages as
11 available under the Copyright Act, 17 U.S.C. §§ 504, 1203 et seq.;

12 3. That Plaintiff be awarded his costs and attorneys' fees as available
13 under the Copyright Act U.S.C. §§ 505, 1203, et seq.;

14 That a trust be entered over all Infringing Uses, and all profits realized
15 through the sales and distribution of said work;

16 4. That Plaintiff be awarded pre-judgment interest as allowed by law;

17 5. That Plaintiff be awarded such further legal and equitable relief as the
18 Court deems proper.

19 Goode has not yet had time to appropriately research relief it may seek should
20 this action move forward. However, Goode anticipates moving for attorneys fees
21 and any other relief available.

22 **12. SETTLEMENT AND ADR**

23 Plaintiff believes that a round of discovery is necessary before settlement offers
24 can be evaluated. The parties have met and conferred as required by ADR L.R. 3-5,
25 and Neff prefers ADR Procedure No. 2 (Mediation).

26 Goode has tendered an offer to settle this litigation to Neff and is awaiting
27 response.
28

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The Parties do not consent to have a magistrate judge conduct all further proceedings, including trial and entry of judgment.

14. OTHER REFERENCES

The parties do not believe that this case is suitable for reference to binding arbitration, special master, or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES.

The Parties do not believe that it is possible to narrow the issues at this time.

16. EXPEDITED TRIAL PROCEDURE

The Parties do not believe that this is case is appropriate to be handled under the Expedited Trial Procedure.

17. SCHEDULING - PROPOSED DATES

Plaintiff proposes the following case schedule:

Proposed Event	Proposed Dates
Designation of Experts	April 8, 2024
Designation of Rebuttal Experts	April 22, 2024
Fact Discovery Cutoff, including hearings on discovery motions	May 9, 2023
Expert Discovery Cutoff, including hearings on discovery motions	June 8, 2024
Last Day to File Dispositive Motions	June 22, 2024
Pretrial Conference	July 4, 2024
Trial	August 19, 2024

1 **18. TRIAL**

2 Neff has requested a jury trial. The parties estimate the trial in this matter to
3 last between 1-3 court days.

4 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**
5 **PERSONS**

6 Plaintiff filed the Certificate of Interested Parties or Person (Dkt. 14) on
7 August 14, 2023, pursuant to Local Rule 7.1-1.

8 Goode will file its Certificate of Interested Parties or Person pursuant to local
9 and federal rules.

10 **20. PROFESSIONAL CONDUCT**

11 All attorneys of record for the parties have reviewed the Guidelines for
12 Professional Conduct for the Northern District of California.

13 **21. OTHER ISSUES**

14 The parties are not currently aware of any other significant issues affecting the
15 status of management of the case, and are not currently making any proposals
16 regarding severance, bifurcation or order of proof.

17
18 WHEREUPON, the parties, by and through their respective attorneys of
19 record, hereby jointly submit this Joint Report.

20
21 Respectfully submitted,

22
23 Dated: August 17, 2023

By:

/s/ Frank R. Trechsel
Frank R. Trechsel, Esq.
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff

1 Dated: August 17, 2023

By:

/s Valerie A. Yanaros, Esq.

Valerie Yanaros, Esq.

2 Texas Bar No. 24075628

3 Applying to Appear Pro Hac Vice in the
Northern District Court of California

4 Yanaros Law, P.C.

5 8300 Douglas Avenue Suite 800

Dallas, Texas 75225

6 Telephone: (512) 826-7553

7 valerie@yanaroslaw.com

8
9 Pursuant to Civil L.R. 54-4.3.4(a)(2)(i), the filer attests that all other
10 signatories listed, and on whose behalf this filing is submitted, concur in the filing's
11 content and have authorized the filing.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28